

House File 2653 - Enrolled

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HOUSE FILE 2653

AN ACT

RELATING TO FORECLOSURE CONSULTANTS AND FORECLOSURE RECONVEYANCES, PROVIDING FOR CRIMINAL AND CIVIL PENALTIES, AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 714E.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Business day" means any calendar day except Saturday, Sunday, or a public holiday including a holiday observed on a Monday.

2. "Contract" means an agreement, or a term in an agreement, between a foreclosure consultant and an owner for the rendition of a service.

3. a. "Foreclosure consultant" means a person who, directly or indirectly, makes a solicitation, representation, or offer to an owner to perform for compensation or who, for compensation, performs a service which the person in any manner represents will do any of the following:

(1) Stop or postpone a foreclosure, foreclosure sale, forfeiture, sheriff's sale, or tax sale.

(2) Obtain a forbearance, modification, or repayment plan from a beneficiary or mortgagee.

(3) Assist the owner to exercise the right of redemption, cure the mortgage default, cure the real estate contract default, or redeem the property from a tax sale.

(4) Obtain an extension of the period within which the owner may reinstate the owner's obligation.

(5) Obtain a waiver of an acceleration clause contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage.

(6) Assist the owner in foreclosure, foreclosure sale, forfeiture, sheriff's sale, tax sale, or loan default to obtain a loan or advance of funds.

(7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or a forfeiture of a real estate contract.

(8) Save the owner's residence from foreclosure, foreclosure sale, forfeiture, sheriff's sale, or tax sale.

(9) Negotiate or obtain a mortgage loan or real estate contract modification, forbearance, repayment plan, or other loss mitigation for the consumer.

b. "Foreclosure consultant" does not include any of the following:

(1) A person licensed to practice law in this state when the person renders service in the course of the person's practice as an attorney at law.

(2) A person licensed to engage in the business of debt management under chapter 533A, when the person is engaged in the business of debt management.

(3) A person licensed as a real estate broker or salesperson under chapter 543B, when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure.

(4) A person licensed as an accountant under chapter 542 when the person is acting in any capacity for which the person is licensed under those provisions.

(5) A person or the person's authorized agent acting under the express authority or written approval of the United States department of housing and urban development or other department or agency of the United States or this state to provide services.

(6) A person who holds or is owed an obligation secured by a lien on a residence in foreclosure when the person performs services in connection with the obligation or lien if the obligation or lien did not arise as the result of or as part

3 4 of a proposed foreclosure reconveyance.
3 5 (7) A person or entity doing business under any law of
3 6 this state, or of the United States, relating to banks, trust
3 7 companies, savings and loan associations, industrial loan and
3 8 thrift companies, regulated lenders, credit unions, insurance
3 9 companies, or a mortgagee approved by the United States
3 10 department of housing and urban development, and a subsidiary
3 11 or affiliate of these persons or entities, and an agent or
3 12 employee of these persons or entities while engaged in the
3 13 business of such persons or entities.
3 14 (8) A person licensed as a mortgage broker or mortgage
3 15 banker pursuant to chapter 535B, when acting under the
3 16 authority of that license.
3 17 (9) A person registered as a mortgage broker or mortgage
3 18 banker or originator pursuant to chapter 535B, when acting
3 19 under the authority of that registration.
3 20 (10) A nonprofit agency or organization that offers
3 21 counseling or advice to an owner of a residence in foreclosure
3 22 or loan default if the nonprofit agency or organization does
3 23 not contract for services with for-profit lenders or
3 24 foreclosure purchasers.
3 25 (11) A judgment creditor of the owner, to the extent that
3 26 the judgment creditor's claim accrued prior to the personal
3 27 service of the foreclosure notice required by section 654.2D,
3 28 but excluding a person who purchased the claim after such
3 29 personal service.
3 30 (12) A foreclosure purchaser as defined in section 714F.1.
3 31 4. "Foreclosure reconveyance" means a transaction
3 32 involving all of the following:
3 33 a. The transfer of title to real property by an owner
3 34 during a foreclosure proceeding, forfeiture proceeding, or tax
3 35 sale, either by transfer of interest from the owner or by
4 1 creation of a mortgage or other lien or encumbrance during the
4 2 foreclosure, forfeiture, or tax sale process that allows the
4 3 acquirer to obtain title to the property by redeeming the
4 4 property as a junior lienholder.
4 5 b. The subsequent conveyance, or promise of a subsequent
4 6 conveyance, of an interest back to the owner by the acquirer
4 7 or a person acting in participation with the acquirer that
4 8 allows the owner to possess either the residence in
4 9 foreclosure or any other real property, which interest
4 10 includes but is not limited to an interest in a contract for
4 11 deed, purchase agreement, option to purchase, or lease.
4 12 5. "Owner" means the record owner or holder of an
4 13 equitable interest through contract of the residence in
4 14 foreclosure at the time the notice of pendency was recorded,
4 15 or at the time the default notice was served.
4 16 6. "Person" means the same as defined in section 4.1.
4 17 7. "Residence in foreclosure" or "affected residence"
4 18 means residential real property consisting of one to four
4 19 family dwelling units, one of which the owner occupies as the
4 20 owner's principal place of residence, where a delinquency or
4 21 default on any loan payment or debt is secured by or attached
4 22 to the residential real property including but not limited to
4 23 contract for deed payments, real estate contracts, or real
4 24 estate taxes.
4 25 8. "Service" includes but is not limited to any of the
4 26 following:
4 27 a. Debt, budget, or financial counseling of any type.
4 28 b. Receiving money for the purpose of distributing the
4 29 money to creditors in payment or partial payment of an
4 30 obligation secured by a lien on a residence in foreclosure.
4 31 c. Contacting creditors on behalf of an owner of a
4 32 residence in foreclosure.
4 33 d. Arranging or attempting to arrange for an extension of
4 34 the period within which the owner of a residence in
4 35 foreclosure, forfeiture, or tax sale may cure the owner's
5 1 default and reinstate the owner's obligation.
5 2 e. Arranging or attempting to arrange for a delay or
5 3 postponement of the time of sale of the residence in
5 4 foreclosure, forfeiture, or tax sale.
5 5 f. Advising the filing of a document or assisting in any
5 6 manner in the preparation of a document for filing with a
5 7 bankruptcy court.
5 8 g. Giving advice, explanation, or instruction to an owner
5 9 of a residence in foreclosure, forfeiture, or tax sale which
5 10 in any manner relates to the cure of a default in or the
5 11 reinstatement of an obligation secured by a lien on the
5 12 affected residence, the full satisfaction of that obligation,
5 13 or the postponement or avoidance of a sale or loss of the
5 14 affected residence, pursuant to a power of sale contained in a

5 15 mortgage.
5 16 Sec. 2. NEW SECTION. 714E.2 FORECLOSURE CONSULTANT
5 17 CONTRACT.
5 18 1. A foreclosure consultant contract must be in writing
5 19 and must fully disclose the exact nature of the foreclosure
5 20 consultant's services and the total amount and terms of
5 21 compensation.
5 22 2. The following notice, printed in at least fourteen
5 23 point boldface type and completed with the name of the
5 24 foreclosure consultant, must be printed immediately above the
5 25 notice of cancellation statement required pursuant to section
5 26 714E.3:
5 27 NOTICE REQUIRED BY IOWA LAW
5 28 (name) or anyone working for
5 29 him or her CANNOT:
5 30 (1) Take any money from you or ask you for money until
5 31 (name) has completely finished
5 32 doing everything he or she said he or she would do; and
5 33 (2) Ask you to sign or have you sign any lien, mortgage,
5 34 or real estate contract.
5 35 3. The contract must be written in the same language as
6 1 principally used by the foreclosure consultant to describe the
6 2 foreclosure consultant's services and to negotiate the
6 3 contract with the consumer. The contract must be dated and
6 4 signed by the owner, and must contain in immediate proximity
6 5 to the space reserved in the contract for the owner's
6 6 signature, a conspicuous statement in a size equal to at least
6 7 ten point boldface type, as follows:
6 8 You, the owner, may cancel this transaction at any time
6 9 prior to midnight of the third business day after the date
6 10 of this transaction. See the attached notice of cancellation
6 11 form for an explanation of this right.
6 12 4. The foreclosure consultant shall provide the owner
6 13 immediately upon execution of the contract with a copy of the
6 14 contract along with the notice of cancellation required in
6 15 section 714E.3.
6 16 5. The three business days during which the owner may
6 17 cancel the contract shall not begin to run until the
6 18 foreclosure consultant has complied with this section and with
6 19 section 714E.3.
6 20 Sec. 3. NEW SECTION. 714E.3 CANCELLATION OF FORECLOSURE
6 21 CONSULTANT CONTRACT.
6 22 1. In addition to any other right under law to rescind a
6 23 contract, an owner has the right to cancel such a contract
6 24 until midnight of the third business day after the day on
6 25 which the owner signs a contract which complies with section
6 26 714E.2.
6 27 2. Cancellation occurs when the owner gives written notice
6 28 of cancellation to the foreclosure consultant at the address
6 29 specified in the contract.
6 30 3. Notice of cancellation, if given by mail, is effective
6 31 when deposited in the mail properly addressed with postage
6 32 prepaid.
6 33 4. Notice of cancellation given by the owner need not take
6 34 the particular form as provided in the contract and, however
6 35 expressed, is effective if the notice of cancellation
7 1 indicates the intention of the owner not to be bound by the
7 2 contract.
7 3 5. The notice of cancellation must contain, and the
7 4 contract must contain on the first page, in a type size no
7 5 smaller than that generally used in the body of the document,
7 6 all of the following:
7 7 a. The real name and physical address of the foreclosure
7 8 consultant to which the notice of cancellation is to be mailed
7 9 or otherwise delivered. A post office box does not constitute
7 10 a physical address. A post office box may be designated for
7 11 delivery by mail only if it is accompanied by a physical
7 12 address at which the notice could be delivered by a method
7 13 other than mail. An electronic mail address may be included,
7 14 in addition to the physical address.
7 15 b. The date the owner signed the contract.
7 16 c. Cancellation occurs when the owner delivers, by any
7 17 means, written notice of cancellation to the address specified
7 18 in the contract. If cancellation is mailed, delivery is
7 19 effective upon mailing. If electronically mailed,
7 20 cancellation is effective upon transmission. The contract
7 21 must be accompanied by a completed form in duplicate,
7 22 captioned "notice of cancellation", which must be attached to
7 23 the contract, must be easily detachable, and must contain in
7 24 at least ten point type the following statement written in the
7 25 same language as used in the contract:

7 26 NOTICE OF CANCELLATION
 7 27
 7 28 (enter date of transaction)
 7 29 You may cancel this transaction, without any penalty
 7 30 or obligation, within three business days from the above
 7 31 date.
 7 32 To cancel this transaction, you may use any of the
 7 33 following methods: (1) mail or otherwise deliver a signed
 7 34 and dated copy of this cancellation notice, or any other
 7 35 written notice of cancellation; or (2) e=mail a notice of
 8 1 cancellation to at
 8 2 (name of foreclosure consultant)
 8 3
 8 4 (physical address of foreclosure consultant's place
 8 5 of business)
 8 6
 8 7 (e=mail address of foreclosure consultant's place of
 8 8 business)
 8 9 Not later than midnight of (date).
 8 10 I hereby cancel this transaction.
 8 11
 8 12 (date)
 8 13
 8 14 (owner's signature)
 8 15 6. The three business days during which the owner may
 8 16 cancel the contract shall not begin to run until the
 8 17 foreclosure consultant has complied with the requirements of
 8 18 this section and with section 714E.2.
 8 19 Sec. 4. NEW SECTION. 714E.4 VIOLATIONS.
 8 20 It is a violation for a foreclosure consultant to do any of
 8 21 the following:
 8 22 1. Claim, demand, charge, collect, or receive compensation
 8 23 until after the foreclosure consultant has fully performed
 8 24 each and every service the foreclosure consultant contracted
 8 25 to perform or represented the foreclosure consultant would
 8 26 perform.
 8 27 2. Claim, demand, charge, collect, or receive a fee,
 8 28 interest, or other compensation for any reason which exceeds
 8 29 eight percent per annum of the amount of any loan which the
 8 30 foreclosure consultant may make to the owner. Such a loan
 8 31 must not, as provided in subsection 3, be secured by the
 8 32 residence in foreclosure or any other real or personal
 8 33 property.
 8 34 3. Take a wage assignment, a lien of any type on real or
 8 35 personal property, or other security to secure the payment of
 9 1 compensation. Any such security is void and unenforceable.
 9 2 4. Receive consideration from any third party in
 9 3 connection with services rendered to an owner unless the
 9 4 consideration is first fully disclosed to the owner.
 9 5 5. Acquire an interest, directly or indirectly, or by
 9 6 means of a subsidiary or affiliate in a residence in
 9 7 foreclosure from an owner with whom the foreclosure consultant
 9 8 has contracted.
 9 9 6. Take a power of attorney from an owner for any purpose,
 9 10 except to inspect documents as provided by law.
 9 11 7. Induce or attempt to induce an owner to enter into a
 9 12 contract which does not comply in all respects with the
 9 13 requirements of this chapter.
 9 14 8. Claim, demand, charge, collect, or receive a fee,
 9 15 interest, or other compensation for promising to negotiate a
 9 16 mortgage loan or real estate contract modification,
 9 17 forbearance, repayment plan, or other loss mitigation for the
 9 18 consumer and failing to successfully negotiate such a
 9 19 modification, forbearance, repayment plan, or other loss
 9 20 mitigation.
 9 21 9. Prohibit the borrower from contacting any lender,
 9 22 servicer, government entity, attorney, counselor, individual,
 9 23 or company that may seek to help the consumer. Any such
 9 24 provision is void and unenforceable.
 9 25 Sec. 5. NEW SECTION. 714E.5 WAIVER NOT ALLOWED.
 9 26 A waiver by an owner of the provisions of this chapter is
 9 27 void and unenforceable as contrary to public policy. An
 9 28 attempt by a foreclosure consultant to induce an owner to
 9 29 waive the owner's rights is a violation of this chapter.
 9 30 Sec. 6. NEW SECTION. 714E.6 REMEDIES.
 9 31 1. A violation of this chapter is an unlawful practice
 9 32 pursuant to section 714.16, and all remedies of section 714.16
 9 33 are available for such an action. A private cause of action
 9 34 brought under this chapter by an owner is in the public
 9 35 interest. An owner may bring an action against a foreclosure
 10 1 consultant for a violation of this chapter. If the court

10 2 finds that the foreclosure consultant violated this chapter,
10 3 the court shall award the owner actual damages, appropriate
10 4 equitable relief, and the costs of the action, and shall award
10 5 reasonable fees to the owner's attorney.

10 6 2. The rights and remedies provided in subsection 1 are
10 7 cumulative to, and not a limitation of, any other rights and
10 8 remedies provided by law. Any action brought by a person
10 9 other than the attorney general pursuant to this section must
10 10 be commenced within four years from the date of the alleged
10 11 violation.

10 12 3. The court may award exemplary damages up to one and
10 13 one-half times the compensation, fees, and interest charged by
10 14 the foreclosure consultant if the court finds that the
10 15 foreclosure consultant violated the provisions of section
10 16 714E.4, subsection 1, 2, or 4, and the foreclosure consultant
10 17 acted in bad faith.

10 18 4. Notwithstanding any other provision of this section, an
10 19 action shall not be brought on the basis of a violation of
10 20 this chapter, except by an owner against whom the violation
10 21 was committed or by the attorney general. This limitation
10 22 does not apply to administrative action by either the attorney
10 23 general or the superintendent of the banking division of the
10 24 department of commerce.

10 25 Sec. 7. NEW SECTION. 714E.7 CRIMINAL PENALTY.

10 26 A person who commits any violation described in section
10 27 714E.4 commits a serious misdemeanor. Prosecution or
10 28 conviction for a violation described in section 714E.4 shall
10 29 not bar prosecution or conviction for any other offenses.
10 30 These penalties are cumulative to any other remedies or
10 31 penalties provided.

10 32 Sec. 8. NEW SECTION. 714E.8 PROVISIONS SEVERABLE.

10 33 If any provision of sections 714E.2 through 714E.7 and
10 34 714E.9 or the application of any of these provisions to any
10 35 person or circumstance is held to be unconstitutional and
11 1 void, the remainder of sections 714E.2 through 714E.7 and
11 2 714E.9 remains valid.

11 3 Sec. 9. NEW SECTION. 714E.9 ARBITRATION PROHIBITED.

11 4 A provision in a contract which attempts or purports to
11 5 require arbitration of a dispute arising under sections 714E.2
11 6 through 714E.5 is void at the option of the owner.

11 7 Sec. 10. NEW SECTION. 714F.1 DEFINITIONS.

11 8 As used in this chapter, unless the context otherwise
11 9 requires:

11 10 1. "Business day" means any calendar day except Saturday,
11 11 Sunday, or a public holiday including a holiday observed on a
11 12 Monday.

11 13 2. "Foreclosed homeowner" means an owner of residential
11 14 real property, including a condominium, that is the primary
11 15 residence of the owner and whose mortgage on the real property
11 16 is or was in foreclosure, forfeiture, or tax sale.

11 17 3. a. "Foreclosure purchaser" means a person that has
11 18 acted as the acquirer in a foreclosure reconveyance.
11 19 "Foreclosure purchaser" includes a person that has acted in
11 20 joint venture or joint enterprise with one or more acquirers
11 21 in a foreclosure reconveyance.

11 22 b. "Foreclosure purchaser" does not include any of the
11 23 following:

11 24 (1) A natural person who shows that the natural person is
11 25 not in the business of foreclosure purchasing and has a prior
11 26 personal relationship with the foreclosed homeowner.

11 27 (2) A person or entity doing business under any law of
11 28 this state, or of the United States, relating to banks, trust
11 29 companies, savings and loan associations, industrial loan and
11 30 thrift companies, regulated lenders, credit unions, insurance
11 31 companies, or a mortgagee or mortgage servicer approved by the
11 32 United States department of housing and urban development or
11 33 any other nationally recognized government-sponsored
11 34 enterprise, and any subsidiary or affiliate of such persons or
11 35 entities, and any agent or employee of such persons or
12 1 entities while engaged in the business of such persons or
12 2 entities.

12 3 4. "Foreclosure reconveyance" means a transaction
12 4 involving both of the following:

12 5 a. The transfer of title to real property by a foreclosed
12 6 homeowner during a foreclosure proceeding, forfeiture
12 7 proceeding, or tax sale proceeding, either by transfer of
12 8 interest from the foreclosed homeowner or by creation of a
12 9 mortgage or other lien or encumbrance during the process that
12 10 allows the acquirer to obtain title to the property by
12 11 redeeming the property as a junior lienholder.

12 12 b. The subsequent conveyance, or promise of a subsequent

12 13 conveyance, of an interest back to the affected homeowner by
12 14 the acquirer or a person acting in participation with the
12 15 acquirer that allows the foreclosed homeowner to possess
12 16 either the affected residence or other real property, which
12 17 interest includes but is not limited to an interest in a
12 18 contract for deed, purchase agreement, option to purchase, or
12 19 lease.

12 20 5. "Resale" means a bona fide market sale of the property
12 21 subject to the foreclosure reconveyance by the foreclosure
12 22 purchaser to an unaffiliated third party.

12 23 6. "Resale price" means the gross sale price of the
12 24 property on resale.

12 25 7. "Residence in foreclosure" or "affected residence"
12 26 means residential real property consisting of one to four
12 27 family dwelling units, one of which the foreclosed homeowner
12 28 occupies as the foreclosed homeowner's principal place of
12 29 residence, where a delinquency or default on any loan payment
12 30 or debt is secured by or attached to the residential real
12 31 property, including but not limited to contract for deed
12 32 payments, real estate contracts, or real estate taxes.

12 33 Sec. 11. NEW SECTION. 714F.2 CONTRACT REQUIREMENT ==
12 34 FORM AND LANGUAGE.

12 35 A foreclosure purchaser shall enter into a foreclosure
13 1 reconveyance in the form of a written contract. The contract
13 2 must be written in letters of a size equal to at least twelve
13 3 point boldface type, in the same language principally used by
13 4 the foreclosure purchaser and foreclosed homeowner to
13 5 negotiate the sale of the residence in foreclosure, and must
13 6 be fully completed and signed and dated by the foreclosed
13 7 homeowner and foreclosure purchaser before the execution of
13 8 any instrument of conveyance of the residence in foreclosure.

13 9 Sec. 12. NEW SECTION. 714F.3 CONTRACT TERMS.

13 10 1. A contract required by section 714F.2 must contain the
13 11 entire agreement of the parties and shall include all the
13 12 following terms:

13 13 a. The real name, business address, and the telephone
13 14 number of the foreclosure purchaser.

13 15 b. The address of the residence in foreclosure.

13 16 c. The total consideration to be given by the foreclosure
13 17 purchaser in connection with or incident to the sale.

13 18 d. A complete description of the terms of payment or other
13 19 consideration including but not limited to any services of any
13 20 nature that the foreclosure purchaser represents the
13 21 foreclosure purchaser will perform for the foreclosed
13 22 homeowner before or after the sale.

13 23 e. The time at which possession is to be transferred to
13 24 the foreclosure purchaser.

13 25 f. A complete description of the terms of any related
13 26 agreement designed to allow the foreclosed homeowner to remain
13 27 in the home including but not limited to a rental agreement,
13 28 repurchase agreement, contract for deed, or lease with option
13 29 to buy.

13 30 g. A notice of cancellation as provided in section 714F.5.

13 31 h. The following notice in at least fourteen point
13 32 boldface type, if the contract is printed or in capital
13 33 letters if the contract is typed, and completed with the name
13 34 of the foreclosure purchaser, immediately above the statement
13 35 required by section 714F.5:

14 1 NOTICE REQUIRED BY IOWA LAW

14 2 Until your right to cancel this contract has ended,
14 3 (name) or anyone
14 4 working for (name) CANNOT ask you to
14 5 sign or have you sign any deed or any other document.

14 6 2. The contract required by this section survives delivery
14 7 of any instrument of conveyance of the residence in
14 8 foreclosure, and has no effect on persons other than the
14 9 parties to the contract.

14 10 Sec. 13. NEW SECTION. 714F.4 CONTRACT CANCELLATION.

14 11 1. In addition to any other right of rescission, the
14 12 foreclosed homeowner has the right to cancel any contract with
14 13 a foreclosure purchaser until midnight of the third business
14 14 day following the day on which the foreclosed homeowner signs
14 15 a contract that complies with this chapter or until 8:00 a.m.
14 16 on the last day of the period during which the foreclosed
14 17 homeowner has a right of redemption, whichever occurs first.

14 18 2. Cancellation occurs when the foreclosed homeowner
14 19 delivers, by any means, written notice of cancellation,
14 20 provided that, at a minimum, the contract and the notice of
14 21 cancellation contains a physical address to which notice of
14 22 cancellation may be mailed or otherwise delivered. A post
14 23 office box does not constitute a physical address. A post

14 24 office box may be designated for delivery by mail only if it
14 25 is accompanied by a physical address at which the notice could
14 26 be delivered by a method other than mail. An electronically
14 27 mailed address may be provided in addition to the physical
14 28 address. If cancellation is mailed, delivery is effective
14 29 upon mailing. If electronically mailed, cancellation is
14 30 effective upon transmission.

14 31 3. A notice of cancellation given by the foreclosed
14 32 homeowner need not take the particular form as provided with
14 33 the contract.

14 34 4. Within ten days following receipt of a notice of
14 35 cancellation given in accordance with this section, the
15 1 foreclosure purchaser shall return without condition any
15 2 original contract and any other documents signed by the
15 3 foreclosed homeowner.

15 4 Sec. 14. NEW SECTION. 714F.5 NOTICE OF CANCELLATION.

15 5 1. The contract must contain in immediate proximity to the
15 6 space reserved for the foreclosed homeowner's signature a
15 7 conspicuous statement in a size equal to at least fourteen
15 8 point boldface type, if the contract is printed, or in capital
15 9 letters, if the contract is typed, as follows:

15 10 You may cancel this contract for the sale of your
15 11 house without any penalty or obligation at any time before
15 12 (date and time of day)

15 13 See the attached notice of cancellation form for an
15 14 explanation of this right.

15 15 The foreclosure purchaser shall accurately enter the
15 16 date and time of day on which the cancellation right ends.

15 17 2. The contract must be accompanied by a completed form in
15 18 duplicate, captioned "notice of cancellation" in a size equal
15 19 to a twelve point boldface type if the contract is printed, or
15 20 in capital letters, if the contract is typed, followed by a
15 21 space in which the foreclosure purchaser shall enter the date
15 22 on which the foreclosed homeowner executes the contract. This
15 23 form must be attached to the contract, must be easily
15 24 detachable, and must contain in type of at least ten points,
15 25 if the contract is printed, or in capital letters, if the
15 26 contract is typed, the following statement written in the same
15 27 language as used in the contract:

15 28 NOTICE OF CANCELLATION

15 29

15 30 (enter date contract signed)

15 31 You may cancel this contract for the sale of your house,
15 32 without any penalty or obligation, at any time before

15 33

15 34 (enter date and time of day)

15 35 To cancel this transaction, you may use any of the
16 1 following methods: (1) mail or otherwise deliver a signed
16 2 and dated copy of this cancellation notice; or (2) e-mail
16 3 a notice of cancellation to at
16 4 (name of purchaser)

16 5
16 6 (physical address of purchaser's place of business)

16 7
16 8 (e-mail address of foreclosure consultant's place of
16 9 business)

16 10 Not later than (enter date and time of day)

16 11 I hereby cancel this transaction.

16 12

16 13 (date)

16 14

16 15 (seller's signature)

16 16 3. The foreclosure purchaser shall provide the foreclosed
16 17 homeowner with a copy of the contract and the attached notice
16 18 of cancellation at the time the contract is executed by all
16 19 parties.

16 20 4. The three business days during which the foreclosed
16 21 homeowner may cancel the contract shall not begin to run until
16 22 all parties to the contract have executed the contract and the
16 23 foreclosure purchaser has complied with this section.

16 24 Sec. 15. NEW SECTION. 714F.6 WAIVER.

16 25 A waiver of the provisions of this chapter is void and
16 26 unenforceable as contrary to public policy except a consumer
16 27 may waive the three-day right to cancel provided in section
16 28 714F.4 if the property is subject to a foreclosure sale, tax
16 29 sale, or contract forfeiture within the three business days
16 30 and the shortened cancellation period was not caused by the
16 31 foreclosure purchaser or an agent of the foreclosure
16 32 purchaser, and the foreclosed homeowner agrees to waive the
16 33 foreclosed homeowner's right to cancel in a handwritten
16 34 statement signed by all parties holding title to the

16 35 foreclosed property.

17 1 Sec. 16. NEW SECTION. 714F.7 ARBITRATION PROHIBITED.

17 2 A provision in a contract which attempts or purports to
17 3 require arbitration of any dispute arising under this chapter
17 4 is void at the option of the foreclosed homeowner.

17 5 Sec. 17. NEW SECTION. 714F.8 PROHIBITED PRACTICES.

17 6 A foreclosure purchaser shall not do any of the following:
17 7 1. Enter into, or attempt to enter into, a foreclosure
17 8 reconveyance with a foreclosed homeowner unless all of the
17 9 following apply:

17 10 a. The foreclosure purchaser verifies and can demonstrate
17 11 that the foreclosed homeowner has a reasonable ability to pay
17 12 for the subsequent conveyance of an interest back to the
17 13 foreclosed homeowner. In the case of a lease with an option
17 14 to purchase, payment ability also includes the reasonable
17 15 ability to make the lease payments and purchase the property
17 16 within the term of the option to purchase. A rebuttable
17 17 presumption arises that a foreclosed homeowner is reasonably
17 18 able to pay for the subsequent conveyance if the foreclosed
17 19 homeowner's payments for primary housing expenses and regular
17 20 principal and interest payments on other personal debt, on a
17 21 monthly basis, do not exceed sixty percent of the foreclosed
17 22 homeowner's monthly gross income. For the purposes of this
17 23 section, "primary housing expenses" means the sum of payments
17 24 for regular principal, interest, rent, utilities, hazard
17 25 insurance, real estate taxes, and association dues. A
17 26 rebuttable presumption arises that the foreclosure purchaser
17 27 has not verified reasonable payment ability if the foreclosure
17 28 purchaser has not obtained documents other than a statement by
17 29 the foreclosed homeowner of assets, liabilities, and income.

17 30 b. The foreclosure purchaser and the foreclosed homeowner
17 31 complete a closing for any foreclosure reconveyance in which
17 32 the foreclosure purchaser obtains a deed or mortgage from a
17 33 foreclosed homeowner. For purposes of this section, "closing"
17 34 means an in-person meeting to complete final documents
17 35 incident to the sale of the real property or the creation of a
18 1 mortgage on the real property conducted by a closing agent,
18 2 who is not employed by or an affiliate of the foreclosure
18 3 purchaser, or employed by such an affiliate, and who does not
18 4 have a business or personal relationship with the foreclosure
18 5 purchaser other than the provision of real estate settlement
18 6 services.

18 7 c. The foreclosure purchaser obtains the written consent
18 8 of the foreclosed homeowner to a grant by the foreclosure
18 9 purchaser of any interest in the property during such times as
18 10 the foreclosed homeowner maintains any interest in the
18 11 property.

18 12 d. The foreclosure purchaser complies with the
18 13 requirements for disclosure, loan terms, and conduct in the
18 14 federal Home Ownership Equity Protection Act, 15 U.S.C. }
18 15 1639, for any foreclosure reconveyance in which the foreclosed
18 16 homeowner obtains a vendee interest in a contract for deed,
18 17 regardless of whether the terms of the contract for deed meet
18 18 the annual percentage rate or points and fees requirements for
18 19 a covered loan in 12 C.F.R. section 226.32 (a) and (b).

18 20 2. Enter into a foreclosure reconveyance unless the
18 21 foreclosure purchaser notifies all existing mortgage lien
18 22 holders of the foreclosure purchaser's intent to accept
18 23 conveyance of any interest in the property from the foreclosed
18 24 homeowner, and fully complies with all terms and conditions
18 25 contained in the mortgage lien documents including but not
18 26 limited to due-on-sale provisions or meeting all qualification
18 27 requirements for assuming the repayment of the mortgage.

18 28 3. Fail to do any of the following:

18 29 a. Ensure that title to the subject dwelling has been
18 30 reconveyed to the foreclosed homeowner.

18 31 b. (1) Make a payment to the foreclosed homeowner such
18 32 that the foreclosed homeowner has received consideration in an
18 33 amount of at least eighty-two percent of the fair market value
18 34 of the property, as the property was when the foreclosed
18 35 homeowner vacated the property, within ninety days of either
19 1 the eviction or voluntary relinquishment of possession of the
19 2 property by the foreclosed homeowner. The foreclosure
19 3 purchaser shall make a detailed accounting of the basis for
19 4 the payment amount, or a detailed accounting of the reasons
19 5 for failure to make a payment, including providing written
19 6 documentation of expenses, within this ninety-day period. The
19 7 accounting shall be on a form prescribed by the attorney
19 8 general, in consultation with the superintendent of the
19 9 banking division of the department of commerce without being
19 10 subject to the rulemaking procedures of chapter 17A.

19 11 (2) For purposes of this paragraph "b", all of the
19 12 following shall apply:

19 13 (a) A rebuttable presumption arises that an appraisal by a
19 14 person licensed or certified by an agency of the federal
19 15 government or this state to appraise real estate constitutes
19 16 the fair market value of the property.

19 17 (b) The time for determining the fair market value amount
19 18 shall be determined in the foreclosure reconveyance contract
19 19 as either at the time of the execution of the foreclosure
19 20 reconveyance contract or at resale. If the contract states
19 21 that the fair market value shall be determined at the time of
19 22 resale, the fair market value shall be the resale price if it
19 23 is sold within sixty days of the eviction or voluntary
19 24 relinquishment of the property by the foreclosed homeowner.
19 25 If the contract states that the fair market value shall be
19 26 determined at the time of resale, and the resale is not
19 27 completed within sixty days of the eviction or voluntary
19 28 relinquishment of the property by the foreclosed homeowner,
19 29 the fair market value shall be determined by an appraisal
19 30 conducted within one hundred eighty days of the eviction or
19 31 voluntary relinquishment of the property by the foreclosed
19 32 homeowner and payment, if required, shall be made to the
19 33 foreclosed homeowner, but the fair market value shall be
19 34 recalculated as the resale price on resale and an additional
19 35 payment amount, if appropriate, based on the resale price,
20 1 shall be made to the foreclosed homeowner within fifteen days
20 2 of resale, and a detailed accounting of the basis for the
20 3 payment amount, or a detailed accounting of the reasons for
20 4 failure to make additional payment, shall be made within
20 5 fifteen days of resale, including providing written
20 6 documentation of expenses. The accounting shall be on a form
20 7 prescribed by the attorney general, in consultation with the
20 8 superintendent of the banking division of the department of
20 9 commerce, without being subject to the rulemaking procedures
20 10 of chapter 17A.

20 11 (c) "Consideration" means any payment or thing of value
20 12 provided to the foreclosed homeowner, including unpaid rent or
20 13 contract for deed payments owed by the foreclosed homeowner
20 14 prior to the date of eviction or voluntary relinquishment of
20 15 the property, reasonable costs paid to third parties necessary
20 16 to complete the foreclosure reconveyance transaction, payment
20 17 of money to satisfy a debt or legal obligation of the
20 18 foreclosed homeowner that creates a lien against the affected
20 19 residence, or the reasonable cost of repairs for damage to the
20 20 dwelling caused by the foreclosed homeowner; or a penalty
20 21 imposed by a court for the filing of a frivolous claim under
20 22 section 714F.9, subsection 6, but "consideration" shall not
20 23 include amounts imputed as a down payment or fee to the
20 24 foreclosure purchaser, or a person acting in participation
20 25 with the foreclosure purchaser, incident to a contract for
20 26 deed, lease, or option to purchase entered into as part of the
20 27 foreclosure reconveyance, except for reasonable costs paid to
20 28 third parties necessary to complete the foreclosure
20 29 reconveyance.

20 30 3. Enter into repurchase or lease terms as part of the
20 31 subsequent conveyance that are unfair or commercially
20 32 unreasonable, or engage in any other unfair conduct.

20 33 4. Represent, directly or indirectly, any of the
20 34 following:

20 35 a. The foreclosure purchaser is acting as an advisor or a
21 1 consultant, or in any other manner represents that the
21 2 foreclosure purchaser is acting on behalf of the foreclosed
21 3 homeowner.

21 4 b. The foreclosure purchaser has a qualification,
21 5 certification, or licensure that the foreclosure purchaser
21 6 does not have, or that the foreclosure purchaser is not a
21 7 member of a licensed profession if that is untrue.

21 8 c. The foreclosure purchaser is assisting the foreclosed
21 9 homeowner to "save the house" or a substantially similar
21 10 phrase.

21 11 d. The foreclosure purchaser is assisting the foreclosed
21 12 homeowner in preventing a completed foreclosure, forfeiture,
21 13 or tax sale if the result of the transaction is that the
21 14 foreclosed homeowner will not complete a redemption of the
21 15 property.

21 16 5. Make any other statements, directly or by implication,
21 17 or engage in any other conduct that is false, deceptive, or
21 18 misleading, or that has the likelihood to cause confusion or
21 19 misunderstanding, including but not limited to statements
21 20 regarding the value of the residence in foreclosure, the
21 21 amount of proceeds the foreclosed homeowner will receive after

21 22 a foreclosure sale, any contract term, or the foreclosed
21 23 homeowner's rights or obligations incident to or arising out
21 24 of the foreclosure reconveyance.
21 25 6. Do any of the following until the time during which the
21 26 foreclosed homeowner may cancel the transaction has fully
21 27 elapsed:
21 28 a. Accept from a foreclosed homeowner an execution of, or
21 29 induce a foreclosed homeowner to execute, an instrument of
21 30 conveyance of any interest in the residence in foreclosure.
21 31 b. Record with the county recorder or file with the
21 32 registrar of titles any document including but not limited to
21 33 an instrument of conveyance, signed by the foreclosed
21 34 homeowner.
21 35 c. Transfer or encumber or purport to transfer or encumber
22 1 any interest in the residence in foreclosure to any third
22 2 party.
22 3 Sec. 18. NEW SECTION. 714F.9 ENFORCEMENT.
22 4 1. REMEDIES. A violation of this chapter is an unlawful
22 5 practice pursuant to section 714.16, and all the remedies of
22 6 section 714.16 are available for such an action. A private
22 7 cause of action brought under this chapter by a foreclosed
22 8 homeowner is in the public interest. A foreclosed homeowner
22 9 may bring an action for a violation of this chapter. If the
22 10 court finds a violation of this chapter, the court shall award
22 11 to the foreclosed homeowner actual damages, appropriate
22 12 equitable relief, and the costs of the action, and shall award
22 13 reasonable fees to the foreclosed homeowner's attorney.
22 14 Notwithstanding any other provision of this section, an action
22 15 shall not be brought on the basis of a violation of this
22 16 chapter except by a foreclosed homeowner against whom the
22 17 violation was committed or by the attorney general. This
22 18 limitation does not apply to administrative action by the
22 19 superintendent of the banking division of the department of
22 20 commerce.
22 21 2. EXEMPLARY DAMAGES. In a private right of action for a
22 22 violation of this chapter, the court may award exemplary
22 23 damages of any amount. If the court determines that an award
22 24 of exemplary damages is appropriate, the amount of exemplary
22 25 damages awarded shall not be less than one and one-half times
22 26 the foreclosed homeowner's actual damages. Any claim for
22 27 exemplary damages brought pursuant to this section must be
22 28 commenced within four years after the date of the alleged
22 29 violation.
22 30 3. REMEDIES CUMULATIVE. The remedies provided in this
22 31 section are cumulative and do not restrict any remedy that is
22 32 otherwise available. The provisions of this chapter are not
22 33 exclusive and are in addition to any other requirements,
22 34 rights, remedies, and penalties provided by law. No action
22 35 under this section shall affect the rights in the foreclosed
23 1 property held by a good faith purchaser for value.
23 2 4. CRIMINAL PENALTY. A foreclosure purchaser who engages
23 3 in a practice which would operate as a fraud or deceit upon a
23 4 foreclosed homeowner is guilty of a serious misdemeanor.
23 5 Prosecution or conviction for any one of the violations does
23 6 not bar prosecution or conviction for any other offenses.
23 7 5. FAILURE OF TRANSACTION. Failure of the parties to
23 8 complete the reconveyance transaction, in the absence of
23 9 additional misconduct, shall not subject a foreclosure
23 10 purchaser to the criminal penalties under this chapter.
23 11 6. STAY OF EVICTION ACTION.
23 12 a. A court hearing an eviction action against a foreclosed
23 13 homeowner must issue an automatic stay, without imposition of
23 14 a bond, if the foreclosed homeowner makes a prima facie
23 15 showing that all of the following apply:
23 16 (1) The foreclosed homeowner has done any of the
23 17 following:
23 18 (a) Commenced an action concerning a foreclosure
23 19 reconveyance.
23 20 (b) Asserts a defense that the property that is the
23 21 subject of the eviction action is also the subject of a
23 22 foreclosure reconveyance in violation of this chapter.
23 23 (c) Asserts a claim or affirmative defense of fraud, false
23 24 pretense, false promise, misrepresentation, misleading
23 25 statement, or deceptive practice, in connection with a
23 26 foreclosure reconveyance.
23 27 (2) The foreclosed homeowner owned the residence in
23 28 foreclosure.
23 29 (3) The foreclosed homeowner conveyed title to the
23 30 residence in foreclosure to a third party upon a promise that
23 31 the foreclosed homeowner would be allowed to occupy the
23 32 residence in foreclosure or other real property in which the

23 33 foreclosure purchaser or a person acting in participation with
23 34 the foreclosure purchaser has an interest and that the
23 35 residence in foreclosure or other real property would be the
24 1 subject of a foreclosure reconveyance.

24 2 (4) Since the conveyance, the foreclosed homeowner has
24 3 continuously occupied the residence in foreclosure or other
24 4 real property in which the foreclosure purchaser or a person
24 5 acting in participation with the foreclosure purchaser has an
24 6 interest.

24 7 b. For purposes of this subsection, notarized affidavits
24 8 are acceptable means of proof to meet the foreclosed
24 9 homeowner's burden. Upon good cause shown, a foreclosed
24 10 homeowner may request and the court may grant up to an
24 11 additional two weeks to produce evidence required to make the
24 12 prima facie showing.

24 13 c. A court may award to a plaintiff a penalty of up to
24 14 five hundred dollars upon a showing that the foreclosed
24 15 homeowner filed a frivolous claim or asserted a frivolous
24 16 defense.

24 17 d. The automatic stay expires upon the later of any of the
24 18 following:

24 19 (1) The failure of the foreclosed homeowner to commence an
24 20 action in a court of competent jurisdiction in connection with
24 21 a foreclosed reconveyance transaction within ninety days after
24 22 the issuance of the stay.

24 23 (2) The issuance of an order lifting the stay by a court
24 24 hearing claims related to the foreclosure reconveyance.

24 25 Sec. 19. EFFECTIVE DATE. This Act, being deemed of
24 26 immediate importance, takes effect upon enactment.
24 27
24 28
24 29

24 30 _____
24 31 PATRICK J. MURPHY
24 32 Speaker of the House
24 33
24 34

24 35 _____
25 1 JOHN P. KIBBIE
25 2 President of the Senate

25 3 I hereby certify that this bill originated in the House and
25 4 is known as House File 2653, Eighty-second General Assembly.
25 5
25 6
25 7

25 8 _____
25 9 MARK BRANDSGARD
25 10 Chief Clerk of the House

25 11 Approved _____, 2008
25 12
25 13

25 14 _____
25 15 CHESTER J. CULVER
25 16 Governor